

International Service Websites Beware
Israel Will Not Enforce Foreign Forum Clauses in Website Regulations*

Many foreign service websites operators as well as many Israeli consumers may not yet be aware of two recent decisions rendered by two different District Court judges in Israel, who ruled that website regulations fixing a distant foreign forum as having exclusive jurisdiction over any dispute which may arise between the service provider and the customer will not be enforced.

In the first case of **Raz Klinghoffer v. PayPal** (T.Z. 39392-04-13) the District Court in Haifa was called upon to rule in a class action suit which was filed against PayPal on the basis that PayPal compelled users to conduct a currency conversion to Israeli currency (while collecting a fee at the same time for such forced conversion), without informing the users in advance of such process (later on PayPal amended its site regulations in order to provide notification of such process).

Within the framework of a class action suit motion, the Court had to rule on the objection raised by PayPal arguing that the Israeli court cannot claim jurisdiction over the case, since the regulations posted on PayPal's site stated that jurisdiction over any dispute between a user and PayPal shall be granted to the **“court located in Singapore or at the domicile of the defendant”**.

The Court found such provision to be a discriminatory provision under the Israeli Uniform Contract rules, which may not be enforced, especially in light of the fact that PayPal provides services to thousands of Israelis, by means of a Hebrew website, intended for the use of Israelis, and also provides support services intended for its customers in Israel.

The Court ruled, that in these circumstances, obligating PayPal customers to adjudicate a case in Singapore in accordance with the laws of Singapore is clearly a provision the intention of which is to block the road of customers to enforce their rights against PayPal which provision shall not be enforced.

The Court held therefore that it does have jurisdiction to hear the class action suit and that PayPal must appear in court in order to adjudicate the case in Israel.

The Court relied, among other matters, upon an earlier ruling of the Israel Supreme Court in Civil Appeal 9725/04 **Ashbourne Company For Agencies and Trade Ltd. v. CAE Electronics Ltd.**, in which the Supreme Court ruled that an international company which markets its products to Israeli customers ought to expect that it shall be sued in Israel.

(It should be noted that in an another file which was conducted before the District Court in Haifa, the court also allowed a claimant to serve papers upon PayPal outside of Israel, however in this file no written reasoning was given for the ruling, so it does not have precedential weight).

Another case which was decided this past summer, dealt with the question whether an Israeli claimant should receive permission from the court to serve a claim outside the borders of Israel against Booking.com.

In this file too, a motion was filed to allow a class action suit to be filed against Booking on the basis that Booking failed to disclose the VAT portion on payments made when reserving hotel rooms in Israel (T.Z. 19529-06-14 **Chuta v. Booking.com, et al.**)

Booking objected to the motion, raising among others, the argument that the regulations fixed in its website state that exclusive jurisdiction over any dispute between Booking and a customer shall be granted to the competent court in Amsterdam, in the Netherlands, and that the case shall be governed by Dutch law.

In this case as well, the Court came to the same conclusion as in the PayPal case, that the foreign jurisdiction clause must not be enforced, since it is a discriminatory clause in a Uniform Contract, and this in light of the fact that Booking provides services, by means of the Internet to hundreds of thousands of Israeli citizens by maintaining a website in Hebrew and providing support services, all intended for its Israeli customers.

In these circumstances, compelling Israeli customers to adjudicate their claims against Booking in the Netherlands is clearly a provision whose express intent is to block the ability of consumers to exercise their rights against Booking. The Court allowed the claimants, therefore, to serve Booking.com abroad thus forcing Booking to appear for the hearings in Israel.

The above cases provide a very clear indication to foreign service companies that they will need to litigate in Israel any claims which may arise against them where an Israeli consumer is involved, and some hard thinking is required by them as to how their website regulations might be re-framed in order to accord with the sentiment and rulings of the Israeli courts.

Might the social networks, Facebook, Twitter, Instagram, etc. be next to be forced to litigate in Israel when it comes to any failure to stop harassment and shaming on such sites? Time will tell.

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